I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D. C. 20231 on April 4, 2002...

Ву

Leonor S. Tuck
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Date: April 4, 2002

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:

Jeffrey R. Sampson, et al.

Group Unit:

Serial No.:

09/938,937

Examiner:

Title: "Use of Unstructured Nucleic in Assaying Nucleic Acid Molecules"

Filed on:

August 24, 2001

Attorney Docket No.:

10003516-1

Assistant Commissioner for Patents Washington, D. C. 20231

## PETITION

Dear Sir:

This is a Petition in Response to the Notice of Incomplete Reply mailed March 14, 2002. In that notice, the period for response was not re-set. Applicants hereby petition from the requirement to comply with the previous due date. The fee for this petition may be charged to

Account No. 50-1078.

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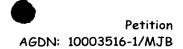
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The facts are as follows:

Applicants filed the above-captioned patent application on August 24, 2001 without a signed declaration. Applicants received a Notice to File Missing Parts dated September 10, 2001. Applicants filed a timely response on November 13, 2001 to the Notice which Applicants thought and intended to be a full response, that is, the response was bona fide and there was no intention to delay proceedings in this case. On March 20, more than 4 months after submitting the response, Applicants received the Notice of Incomplete Reply dated March 14, 2002. Upon investigation, Applicant discovered that the Notice to File Missing Parts (dated September 10, 2001) indicated that, in addition to the signed declaration, substitute drawings and a sequence listing were also required, which Applicants had not noted before.

It is our understanding of Patent Office practice that when a bona fide response is made to the Patent office but the response is inadequate, that a 30 day period for response is allowed to correct the earlier submitted but inadequate response.

Applicants submit this petition to request a 30 day period for response be set for the Notice of Incomplete Reply dated March 14, 2002. Because the Applicants Response (filed November 13, 2001) had already been submitted for more than 4 months prior to Applicants receiving notice from the Patent Office (mailed on March 14, 2002) of the inadequacy of the Response, it would be manifestly unfair to require that the Applicant petition for an extension of time to reply to the Notice of Incomplete Reply. This is the reason for the present Petition



for Relief requesting that the period for Response be re-set to 30 days from the mailing of the Notice of Incomplete Response.

If this petition is not heard prior to the fee for the extension of time for the submission of the sequence listing being charged to Applicant's Deposit Account, the Applicants further request that the charge be rescinded and refunded to the Applicant's Deposit Account.

Accompanying this petition is a copy of the Response filed on the same day as the filing of this Petition. Said Response is believed to complete the Requirements set forth in the Notice to File Missing Parts mailed on September 10, 2001.

## ALTERNATIVE REQUEST FOR RELIEF

If the above-petitioned for relief is not granted, Applicants request in the alternative that the time for response be tolled (stopped) for the period of time from when Applicants mailed their initial response (November 13<sup>th</sup>, 2001) until the mailing of the Notice of Incomplete Reply (March 14<sup>th</sup>, 2001), a period of 121 days. The effect of this requested relief would be to shorten the period of time for which Applicants would have to buy an extension of time due to the extended period (121 days) that the Response was held at the Patent Office. Subtracting the 121 days from the date of the filing of the Sequence Listing and drawings on April 4, 2002, would mean that Applicants would need to file a one month extension to comply with the response date set forth in the Notice to File Missing Parts mailed September 10, 2001. Applicant's have requested this one month

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extension in the Response filed on the same day as the filing of this Petition (copy enclosed).

Any questions regarding this Petition may be directed to the below signed Attorney.

Respectfully submitted,

JEFFREY R. SAMPSON, ET AL.

achail

Michael J. Beck Reg. No.: 40,907

Date: April 4, 2002

Phone No.: (650) 485-3864

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Agilent Technologies, Inc.

IP Administration